

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ANTOLIN ANDREW MARKS,

Plaintiff,

v.

DE GUIA *et al.*,

Defendants.

Case No. C07-5667BHS/JKA

ORDER TO SHOW CAUSE

This action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR 4. This action was removed from Pierce County Superior Court and the Superior Court cause number was 07-2-13300-9.

Counsel for the Pierce County Sheriff has argued lack of personal service in this case (Dkt. # 8, 9, and 10). The case was removed from Superior Court, and plaintiff alleges the Superior Court ordered the Sheriff to personally serve the summons and complaint on defendants. Thus, this may be a case where the lack of service is the result of the defendant's failure to comply with a court order and no fault of the plaintiff's. Plaintiff is proceeding *in forma pauperis* and the duty to serve the complaint rests with the court and law enforcement, not the plaintiff.

1 Local General Rule 4 (d) provides:

2 Any attorney or party who without just cause fails to comply with any of the Federal
3 Rules of Civil or Criminal Procedure, or these rules, or orders of the court, or who presents
4 to the court unnecessary motions or unwarranted opposition to motions, or who fails to
5 prepare for presentation to the court, **or who otherwise so multiplies or obstructs the
6 proceedings in a case as to increase the cost thereof unreasonably and vexatiously,
7 may, in addition to, or in lieu of the sanctions and penalties provided elsewhere in
8 these rules, be required by the court to satisfy personally such excess costs, and may
9 be subject to other sanctions as the court deems appropriate.**

10 See, Local Rule 4 (d) (emphasis added).

11 The court ORDERS as follows:

- 12 (1) Counsel for Sheriff Pastor will provide the Court with a copy of the order
13 granting plaintiff in forma pauperis status entered in Superior Court on
14 October 23, 2007 in cause number 07-2-13300-9.
- 15 (2) If that order, or any other document in the Superior Court case ordered the
16 Sheriff's Office to serve the summons and complaint in this action show
17 cause why sanctions should not be imposed.

18 A response to this order is due on or before **February 22, 2008**. The clerk's office is directed to
19 send copies of this order to plaintiff and counsel for defendants and note the **February 22, 2008**, due date.

20 DATED this 29 day of January, 2008.

21 /S/ J. Kelley Arnold
22 J. Kelley Arnold
23 United States Magistrate
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